



## **General Terms and Conditions of Sale (GTCs)**

### **of Brandenburger Liner GmbH & Co. KG Landau**

#### **1 Scope of Application**

1.1 The present General Terms and Conditions of Sale (GTCs) apply to all of our business relationships with our customers (also referred to as "buyers") relating to the delivery of pipe liners ("liners") and accessories for the same (collectively: "goods"). Any differing, conflicting or supplementary terms and conditions of the customer shall only apply if and insofar as we have agreed to their application. The present GTCs shall also apply if we make delivery to the customer without reservation in full knowledge of differing, conflicting or supplementary terms and conditions of the customer. The present GTCs only apply with respect to business persons, legal entities under public law, or special funds under public law.

1.2 The provisions of the Incoterms referred to below form part of these GTCs.

#### **2 Written Form**

2.1 Insofar as the present GTCs provide for the written form, e-mails, faxes, print-outs and electronic declarations shall also satisfy this requirement with a view to customary usage. Data shall be sent by e-mail at the buyer's own risk.

2.2 No verbal, ancillary agreements shall be entered into. Any amendments to a contract must be made in writing. Agreements concerning deviations from the requirement of the written form must also be made in writing. This shall not affect the possibility of substantiating specific verbal agreements.

#### **3 Contract Formation**

Our quotes are issued without obligation and do not constitute legally binding offers, but rather requests for the submission of quotes. Only the placement of an order by the buyer shall constitute a binding offer. A contractual obligation does not arise until our written confirmation of the order has been received by the buyer. Only the contents of the order confirmation shall be authoritative. Agreements reached verbally, by telephone or by telegram shall only be binding if they are subsequently confirmed in writing, unless the parties explicitly agree that they shall be binding in a particular case. The buyer shall be liable for the accuracy of the documents and information he/she provides, including but not limited to drawings and information regarding applications.

#### **4 Deadlines for Delivery, Transfer of Risk, Place of Performance**

4.1 Delivery lead times shall be agreed on a case-by-case basis prior to or upon the conclusion of the contract in the form of weekly appointments, which only become binding once we have committed to them in writing. The delivery lead time stated by us shall only commence provided the buyer properly and promptly fulfills his/her contractual obligations. This includes the prompt receipt of all documents to be supplied by the buyer, necessary permits (including permits pursuant to No. 5 - Export Arrangements -) and approvals, and compliance with the agreed terms and conditions of payment. If these conditions are not

met in good time, the deadlines shall be extended accordingly. Compliance with delivery lead times and deadlines shall be determined based on when notice of readiness for collection was issued (cf No. 4.8).

4.2 Any circumstances or events that could not be prevented by exercising the care of proper business management shall qualify as force majeure. Any form of force majeure, unforeseeable disruptions to business, transport or shipping, fire damage, flooding, unforeseeable shortages of labour, power, raw materials or auxiliary supplies, strikes, lock-outs, official directives or other impediments for which we are not responsible and that impact, delay, or prevent production or shipping, or make production or shipping an unreasonable prospect, shall release us from the obligation to make delivery for the duration and to the extent of the disruption. We may withdraw from the contract if delivery is delayed by more than eight weeks as a result of the disruption. We shall be under no obligation to offset the loss of some or all of our procurement sources using other sub-suppliers. In such case, we shall be entitled to distribute the volumes of goods available while taking our own needs into consideration. The buyer shall not have any other claims.

4.3 Compliance with delivery lead times shall be subject to the proper and prompt receipt of our own deliveries. No. 4.2, sentence 2 - 4 apply mutatis mutandis. Our withdrawal shall, however, be subject to the condition that we stock up properly and promptly, and notify the buyer without delay if our sub-supplier is unable to deliver properly or promptly. We shall reimburse any advance payments made by the buyer, subject to the exclusion of offsetting against our claims.

4.4 Partial deliveries may be made and billed for provided this does not entail any disadvantages for the execution of the contract.

4.5 We shall only be considered in default of delivery or performance if the delivery or performance is due and an explicit written reminder has been issued. If we are in default of delivery or performance, and if the buyer suffers a loss as a result, he/she may demand compensation of 0.5% for each full week of the delay, up to a total of 5% of the price of the delayed deliveries or services.

4.6 Claims on the part of the buyer for damages due to delayed delivery or performance and in lieu of delivery or performance that exceed the limits specified by the preceding paragraph 4.5 shall be excluded in all cases of delayed delivery or performances, including after a deadline for delivery or performance set by us has passed. This shall not apply in the event of mandatory liability due to wilful intent, gross negligence or harm to life, limb or health. The buyer may only withdraw from the contract in accordance with statutory provisions if we are responsible for the delay in delivery. There is no change in the burden of proof to the detriment of the buyer associated with the above provisions.

4.7 The place of performance for delivery and payment is our registered office.

#### 4.8

a) The timing of the transfer of risk shall be determined by the EXW clause of the most recent version of the Incoterms. In accordance with said clause, the risk of the accidental destruction or deterioration of the goods shall be transferred to the buyer when notice of readiness for collection is issued. The handover of the consignment to the courier or the departure of the goods from our plant or warehouse for shipping shall be treated as equivalent to issuing notice of readiness for collection if the goods are being shipped at the buyer's request. All consignments shall be shipped at the buyer's risk, from the time when the consignment leaves our plant or warehouse, even if carriage paid delivery has been agreed on.

b) If the collection or shipping are delayed at the buyer's request, or for a reason for which he/she is not responsible, or if they become impossible through no fault of ours, the risk shall still be transferred to the buyer upon notice of readiness for collection. In such cases, we shall be entitled to store the goods at our own discretion, at the buyer's expense and risk, to implement all measures that we deem suitable, and to invoice for the goods as if they had been delivered. We shall also be entitled to demand compensation for any losses we suffer as a result, including any additional expenses. The statutory provisions pertaining to delayed acceptance shall remain unaffected. If a suitable deadline for collection passes fruitlessly, we may also put the goods to some other use and supply the goods to the buyer with a suitable, extended deadline, or supply them to the buyer at his/her own expense and risk.

c) The buyer must pay the costs incurred, but no less than a storage fee amounting to 0.5% of the invoice total for each (partial) month from the date on which notice of readiness for shipping was issued.

## **5 Export Provisions**

5.1 If, after the contract has been concluded, circumstances come to our attention that justify the assumption of a past or future violation of national, European, international or US export laws, or applicable permit requirements, and if we credibly describe the same to the buyer without delay, we shall be granted a suitable period to investigate the matter further. During this investigation period, and any necessary permit procedure, the parties mutually agree that default on performance shall be excluded. If a necessary permit is not granted, or cannot be granted for some other reason, we shall be entitled to refuse performance and withdraw from the contract.

5.2 Resale to countries that are the subject of a total or partial or full embargo, or to blacklisted individuals, shall always require a permit. The buyer undertakes to already notify us of any planned use of the requested goods for military or nuclear purposes at the request stage. This shall also apply if the buyer is acting directly or indirectly on behalf of third parties, and is aware that the requested goods are to be used for the aforementioned purposes.

5.3 At our request, the buyer shall provide us with the corresponding end use documents in the format prescribed by the German Federal Office of Economics and Export Control (BAFA), without delay, and no later than ten work days (Monday to Friday) following our request.

5.4 The buyer shall be responsible for observing and implementing the relevant export provisions, as well as the laws of his/her country and the country in which delivery is to be made. When concluding the contract, he/she must draw our attention to peculiarities resulting from such provisions, such as the German export list, Annexes I and IV to the EU's Dual Use Regulation, or the US Commerce Control List.

5.5 In the event of failure to comply with the provisions of paragraphs 2) through 4), the buyer shall be liable to us for any damages incurred as a result, and shall hold us harmless against any third-party claims asserted in this regard.

## **6 Proof of Export**

If a buyer based outside the Federal Republic of Germany, or a representative of the same, collects goods and transports or ships them to another country, the buyer must provide us with the proof of export that is required for tax purposes. If no such proof is provided, the buyer must pay the VAT owed on the deliveries within the Federal Republic of Germany.

## **7 Prices, Transportation Costs, Modes of Payment**

7.1 The purchase price is set out in our order confirmation. For domestic transactions, statutory VAT always applies even if it was overlooked in the order confirmation. If statutory duties or fees that apply to the trading of goods or increase the price of services (including, but not limited to VAT, customs duties, settlement amounts, currencies, freight forwarding fees), or collectively agreed rates of pay, increase within four months of concluding the contract but before the contract is executed, we shall be entitled to increase the price by the amount of the additional costs we have verifiably incurred. The same applies to the necessary procurement of input materials in connection with contracts whose execution or partial execution is not scheduled until seven months after the conclusion of the contract. In the case of master agreements, the agreed prices shall apply. If the procurement prices we pay for raw materials increase by more than 5%, the agreed price shall be adjusted to reflect these changed circumstances. The amount of the adjustment shall be mutually agreed.

7.2 Unless otherwise confirmed, invoices shall fall due for payment without deduction 30 days after the invoice date. The right to assert claims for more extensive losses incurred due to delays shall not be affected.

7.3 Unless carriage paid delivery is agreed, our prices do not include transportation costs or insurance for the goods being transported, which are borne by the buyer. Insurance for damage incurred during transportation shall only be taken out at the request and expense of the buyer. If we have entered into a shipping obligation, this shall not affect the transfer of risk, place of fulfillment or the above provisions. We



shall choose the mode and route of shipping, but with no guarantee of the least expensive freight forwarding, the full utilisation of the payload, or desired vehicle and container sizes. We shall choose the forwarding agent. The buyer shall pay any additional costs incurred as a result of any different preferences on his/her part. We must be notified of such preferences in good time prior to shipping. Any preferences expressed by the buyer shall be taken into consideration if possible, at the buyer's expense. If the goods are damaged or lost during transportation, the buyer must arrange a stock-check without delay, and inform us of the result in writing without delay after receiving the consignment. The damaged consignment must be returned to us following prior consultation.

7.4 We may withdraw from the contract, demand payments in advance or make our delivery dependent on the provision of collateral if, after concluding the contract, we become aware of circumstances that cause us to doubt the buyer's creditworthiness or solvency. We shall also enjoy said rights if due claims are not settled immediately despite reminders, or, for example, by applying for the institution of insolvency proceedings.

7.5 The buyer grants us a lien to the materials provided to us for the execution of the order and all substitute claims as security for all present and future claims arising from the business relationship with him/her. If the buyer defaults on payments or loan instalments, we shall be entitled to sell the pledged materials at their listed value or, if they are not listed, the average price on the German market, on the day of default.

7.6 If the buyer is not willing to make payments in advance or provide collateral, we shall be entitled, following a suitable grace period, to withdraw from these contracts and demand compensation for damages due to non-fulfilment or compensation for expenses.

## **8 Binding Nature of Drawings, Illustrations, Dimensions, Weights and Measurements**

If delivery is made on the basis of measurements taken by the buyer, we shall be under no obligation to verify the accuracy of said measurements, nor shall we be liable for the same. We are only liable for measurements we have taken.

The diameter, weight, structure and quality of delivered liners may vary for reasons relating to the raw materials and production processes used. Excess lengths that are customary for the trade are permitted unless they violate DIN, EN or ISO standards, and do not provide grounds for complaints or price reductions. If there are no DIN standards or material sheets available, the corresponding EN or ISO standards shall apply in the absence of customary trade standards.

## **9 Industrial Property Rights**

9.1 If the goods are to be manufactured in accordance with the buyer's specifications, the buyer shall be liable for ensuring that the production and delivery do not violate any third-party industrial property rights.

9.2 If, in such a case, third parties prohibit us from manufacturing or delivering the goods on account of their industrial property rights, we shall be entitled to discontinue all activities relating to production and delivery and demand compensation for the work already carried out.

9.3 We are under no obligation to verify the legal situation.

9.4 In such a case, any claims for damages on the part of the buyer shall be excluded.

9.5 The buyer must pay compensation for losses we incur as a result of the violation of industrial property rights, and hold us harmless against third-party claims. We must be paid in advance upon demand for any litigation costs.

## **10 Documents, Confidentiality, Data Protection**

10.1 We reserve ownership of or copyright to all of the offers and quotes we issue, as well as all drawings, illustrations, calculations, prospectuses, catalogues, models, tools and other documents and aides provided to the buyer. The buyer may not make these items or their contents accessible to third parties, disclose the

same, use or reproduce them, or allow third parties to use or reproduce them, without our explicit written consent. Upon our request, the buyer must return these items to us in full, destroy any copies and delete electronic files if they are no longer required for ordinary business or if negotiations do not lead to the conclusion of a contract.

10.2 If the buyer becomes aware of our business secrets and/or know-how during the execution of the order, he/she must treat these as confidential and take precautions to ensure that our protectable interests are not violated, and protectable knowledge can only be used in connection with the order or the subsequent use of the goods themselves. Specifically, the buyer shall be required to prove that it had previously been aware of the business secrets and/or know-how, or that they were at least public knowledge.

10.3 The buyer must treat all commercial and technical details relating to the order as business secrets. He/she is under an obligation to treat the documents and information as confidential even after the execution of the contract in question. Reproduction is only permitted insofar as it is necessary for business purposes, and in accordance with the provisions of copyright law. Disclosure to third parties shall require our written consent.

10.4 When processing the buyer's personal data, we shall observe the pertinent statutory provisions, including but not limited to those of the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG).

We shall only collect, store, process and use the buyer's personal data if, insofar and for as long as necessary for the formation, execution and termination of a contractual relationship. We shall only collect, store, process and use personal data more extensively if required or permitted to do so by law, or with the buyer's permission.

## 11 Property Details, Advice, Material Testing

11.1 Special properties of the liners shall only become contractual properties at the express wish of the customer, and only if we have mentioned such properties in our order confirmation. Otherwise, the agreed properties shall (only) be based on our technical product descriptions, the specific material values and DIN regulations described there, our sales prospectuses and similar. Any other public statements, praise or marketing shall not constitute information on the properties of the liners.

11.2 The buyer alone shall be responsible for assessing the liners' suitability for its own purposes, and for selecting quality. This applies in particular to compliance with statutory and official regulations in connection with the use of the liners. The liners we supply are approved for use in EU member states. The buyer is responsible for determining whether the liners may be used outside the EU.

11.3 We only manufacture and supply the liners. They are installed and hardened by the buyer (please also refer to No. 11.5.). **The buyer must install and harden the liners in the trenches (please refer to No. 13.2 for more details) in accordance with the most recent installation manual (which we update regularly and supply to our existing customers on an ongoing basis, and other customers without delay upon request).** Any advice, information or recommendations (referred to collectively as "advice") provided by us that goes beyond this, including by our (Brandenburger Liner GmbH & Co. KG) employees at the site where the liners are used, regarding the use or processing of the liners, shall be based exclusively on a consultation agreement concluded with us. Otherwise, we shall not enter into any obligations to provide advice. Such a consultation shall not be aimed at achieving a particular result, but rather take the form of an agency agreement. Our liability in connection with such a consultation agreement and/or the installation handbook manual shall be based on Nos. 14.1 through 14.4.

11.4 If we provide advice that does not relate to liners supplied by us, all liability in this regard shall be excluded.

11.5 The liners shall also not be installed and/or hardened by us if the buyer procures or leases the installation and/or hardening equipment from a third-party company, with or without the provision of personnel. Said third-party company shall also not be our vicarious agent. Both preceding sentences shall also apply if we are legally associated with the third-party company in any way.

## 12 Packaging Materials

12.1 Unless otherwise agreed, we shall specify the nature and amount of packaging. We shall exercise the necessary care and our best judgement when selecting the packaging. Packaging for purposes other than transportation, or any other special protection, for example for long-term storage, shall require an explicit agreement.

12.2 Unless otherwise agreed, we shall only take packaging materials back insofar as we are required to do so by German packaging regulations.

## 13 Requirement to Report Complaints, Material Defects, Recourse Claims, Withdrawal, Compensation for Damages, Expiry

13.1 Claims for defects on the part of the buyer, and all contractual claims for damages due to defects in the goods, shall require the buyer to have properly fulfilled his/her obligations to examine the goods and report complaints in accordance with Sec. 377 HGB. Otherwise, the goods shall be deemed to have been accepted. Upon receiving the goods, and in any case before installing the liners, the buyer shall examine the goods to the customary extent and report any defects without delay (the examination obligations after hardening pursuant to Section 2 remain unaffected). Concealed defects must be reported without delay once they have been discovered. All complaints must be made in writing in order to be effective (cf. No. 2.1.). At our request, the buyer shall allow us to examine the goods, and not make any changes to it by means of processing, installation or any other business use, until we have reached a decision on whether to accept or reject the complaint. In the event of unjustified complaints, we shall charge freight and transportation costs, as well as the costs of the examination itself, to the buyer. Reporting defects does not release the buyer from his/her payment obligations.

13.2 After hardening, the buyer must take samples of the liner material, and send these samples to us and to his/her own laboratory to test the most important technical and physical properties (such as bending stress, bending modulus, wall thickness, watertightness). The buyer must keep a log of the hardening process, and provide a copy to us. **Defects in the liners that become apparent to the buyer as a result of the laboratory findings and/or the hardening log must be reported to us within two weeks (cf. No. 2.2.). Otherwise, all warranty rights in connection with said defects shall be excluded.**

13.3 Our liability for material defects that were already present when the risk was transferred shall be governed as follows:

a) We must first be given the opportunity to subsequently fulfill our obligations within a reasonable period. If this subsequent fulfillment fails, the buyer may withdraw from the agreement or reduce the amount of compensation paid, irrespective of any claims for damages.

b) Claims for defects shall not be valid in the event of only immaterial deviations from the agreed properties, an only immaterial impact on utility, natural wear, or damage incurred after the transfer of risk as a result of erroneous or negligent handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable foundations, or extraordinary external factors that were not presupposed in accordance with the contract. If the buyer or a third party carry out improper changes or maintenance work, any claims for defects relating to this work and the consequences thereof shall also be excluded.

c) Claims on the part of the buyer relating to expenses that are necessary for the purpose of subsequent fulfillment, including transportation, travel, work and material costs, shall be excluded insofar as expenses go up because the goods are subsequently transported to a location other than the site of use or the buyer's construction site.

d) Recourse claims on the part of the buyer against us in accordance with Sec. 478 BGB (recourse on the part of the contractor), insofar as such claims are at all possible, shall only be valid insofar as the buyer has not entered into any agreements with his/her buyer that go beyond statutory claims for defects.

e) Claims and rights due to defects and any resulting damages shall expiry after a year. The above expiry period shall not apply if the law prescribes longer periods in the cases governed by Secs. 438 (1) No. 2, 479 and 634 a (1) No. 2 BGB. This shall not affect the loss of all claims for defects pursuant to Section 2.



13.4 In the event that the buyer withdraws from the contract, he/she shall pay compensation for lost value, including if the goods have deteriorated due to contractual usage.

13.5 Subsequent fulfillment measures, i.e. the delivery of defect-free goods or the rectification of defects, shall not reset the expiry period, but only extend the expiry period for the original goods by the duration of the subsequent fulfillment measure. In the event of doubt, the implementation of subsequent fulfillment measures by us shall not constitute recognition pursuant to Sec. 212 No. 1 BGB.

13.6 There is no change in the burden of proof to the detriment of the buyer associated with the above provisions.

13.7 In all other respects, No. 14 (Other Claims for Damages) shall apply to claims for damages. Any other, or more extensive claims on the part of the buyer against us and our vicarious agents due to material defects in addition to those governed by No. 13 shall be excluded.

13.8 Unless explicitly agreed otherwise, the statutory provisions pertaining to the start, extension and resetting of the expiry period shall remain unaffected.

#### **14 Other Claims for Damages**

14.1 Claims on the part of the buyer for damages and compensation for expenses ("claims for damages"), whatever their legal basis, including claims due to the violation of contractual obligations and unlawful acts, shall be excluded.

14.2 This shall not apply in the event of mandatory liability, for example in accordance with the German Product Liability Act, due to wilful intent, gross negligence, harm to life, limb or health, or the violation of material contractual obligations. Claims for damages due to the violation of material contractual obligations shall, however, be limited to typical, foreseeable damages unless liability applies due to wilful intent, gross negligence, or harm to life, limb or health. There is no change in the burden of proof to the detriment of the buyer associated with the above provisions.

14.3 Liability to pay damages shall also be excluded if the buyer has effectively limited liability with respect to his/her client or a third-party buyer. The buyer shall endeavour to also agree on liability limits in our favour, to the extent permitted by law.

14.4 If the buyer is entitled to assert claims for damages in accordance with the present No. 14, these shall expire at the end of the expiry period for claims for defects pursuant to No. 13.2 e). Statutory time barring provisions shall apply to claims for damages due to wilful intent, if we have maliciously concealed a defect, if we have assumed a guarantee for the properties of the goods, claims for damages due to harm to life, limb, health or personal freedom, claims under the German Product Liability Act, a violation of obligations due to gross negligence or the culpable violation of material contractual obligations, and if the statutory provisions pertaining to purchases of consumer goods apply.

#### **15 Reservation of Title**

15.1 All goods shall remain our property until our purchase price receivables against the buyer, including those stemming from earlier or subsequent transactions, have been settled in full. The buyer shall only be entitled to dispose of the reserved goods in ordinary business dealings, including but not limited to selling them on to third parties or processing them (for example by installing them in the sewers of the buyer's client) until we issue a revocation pursuant to No. 15.4 sentence 3.

15.2 The buyer shall assign receivables from a third party resulting from the selling on of the reserved goods to us in advance (extended reservation of title for resale). If the value of the reserved goods increases at the third party as a result of processing or refinement, the advance assignment shall be limited to our invoice total plus ten per cent. The buyer shall not assert the assigned receivables to our detriment.

15.3 The buyer shall also assign receivables from a his/her client resulting from the processing (including but not limited to the installation of the liners in sewers, shafts, pipe encasements) to us in advance (extended reservation of title for processing on the basis of a contract for work or services).

15.4 In ordinary business dealings, the buyer shall be entitled to collect the receivables assigned in accordance with Nos. 15.2 and 15.3 him/herself provided he/she meets his/her payment obligations with respect to us. We undertake to refrain from collecting the assigned receivables ourselves for as long as this is the case. We may, however, revoke this authority to collect the receivables as soon as the buyer stops meeting his/her payment obligations. In such a case, the buyer shall be obliged to notify us of the third party's or client's identity, and to inform them about the assignment. This shall not affect our entitlement to collect the receivable ourselves.

15.5 The buyer shall notify us without delay of the attachment or other encumbrances on our reserved goods, or any receivables assigned to us in advance by the buyer's creditors in connection with their resale or processing. Upon request, the buyer shall grant access to his/her business premises to allow the verification, labelling, separate storage or removal of the reserved goods. The buyer undertakes to provide us the information required to assert claims against third parties or clients that have been assigned in advance, and to also supply copies of the necessary documents.

15.6 Insofar as our rights in connection with the simple or extended reservation of title combined with any other securities in rem granted to us by the buyer exceed the value of our receivables in connection with the business relationships by more than ten per cent, we shall release securities of our choosing at the buyer's request.

15.7 In the case of sales to other countries, if the reservation of title agreed in the present No. 15 is not permitted with the same effect as in German law, the goods shall remain our property until the settlement of all of our receivables arising from the contractual relationship relating to the sale of the goods. If even this reservation of title is not permitted with the same effect as in German law, but it is possible to reserve other rights to the goods, we shall be entitled to exercise all such rights. The buyer shall be obliged to assist with measures that we want to implement in order to protect our right of ownership or any other rights to the goods. In the event of gross violations of this obligation to assist, the buyer shall pay us compensation for the resulting damages and/or additional expenses.

## **16 Defence of Insecurity, Offsetting and Retention**

The offsetting of counterclaims on the part of the buyer against our claims for payment shall be excluded unless said counterclaims have been recognised by us, are undisputed, or have been recognised by declaratory judgement.

The buyer shall have no right of retention in connection with counterclaims arising from any other contractual relationship than the one in question.

## **17 Applicable Law, Incoterms**

17.1 The contract shall be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 shall not apply.

17.2 The most recent version of the INCOTERMS shall apply.

## **18 Place of Jurisdiction**

If the buyer is a businessperson, the courts where we have our registered office shall have sole jurisdiction over all disputes arising directly or indirectly from the contractual relationship. This shall also apply to disputes relating to actions relating to documentary evidence, bills of exchange or cheques. We may, however, also file lawsuits at the buyer's registered address.

Last revised: October 2020